IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1201 of 1996

in

SPECIAL CIVIL APPLICATIONNo 6435 of 1991

with

LETTERS PATENT APPEAL No 1303 of 1996

in

SPECIAL CIVIL APPLICATION NO. 6435 OF 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SITARAM P DELHIWALA

Versus

CENTRAL EXCISE AND CUSTOMS DEPARTMENT

Appearance:

MR MB GANDHI for Appellants

MR JAYANT PATEL for Respondent No. 1, 2

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE A.L.DAVE
Date of decision: 25/10/1999

ORAL JUDGEMENT (Per Panchal, J.)

#. Both these appeals, which are instituted under Clause 15 of the Letters Patent, are directed against judgment dated August 21, 1996, rendered by the learned Single Judge in Special Civil Application No.6435 of 1991. The appeals involve determination of common questions of facts and law and,therefore, we propose to dispose them of by this common judgment.

#. The original petitioners are the owners of Block No.3, situated in Stadium House, at Navrangpura, Ahmedabad. An area admeasuring 105.22 sq. metres was let out to Central Excise and Customs Department, Division No.III, at the rate of Rs.1.25 per sq. feet by a lease deed dated June 15, 1975 for a period of five years. The lease expired on June 15, 1980 and, according to the terms of the lease, the original owners had option of terminating the lease or re-entering into an agreement. The original owners, therefore, gave a notice terminating the lease and, in the alternative, demanded higher rent. The notice was given on September 21, 1981. However, meanwhile, the Directorate of Estates, Government of India, had issued office memorandum dated September 1, 1982 stipulating that the rent should be got reassessed from the Central Public Works Department ('CPWD' for short) on the expiry of period of five years from the date of original assessment and after every five years thereafter. In spite of this office memorandum, no steps were taken by the department to get the rent revised. Again, on August 22, 1984, the Government of India, Ministry of Works and Housing, issued another office memorandum regarding revision of rent, providing therein that initiative should not be taken by the department, but the rent should be revised on application being made by the landlord. In the light of the second office memorandum, the petitioners made application for revision of rent but thereafter also, no steps were taken by the department to get the rent revised. Under the circumstances, the petitioners filed Special Civil Application No.6435 of 1991 and prayed to issue a writ of mandamus directing the original respondents to approach CPWD for reassessment of the rent of the property for the period from September 1, 1982 to August 30, 1987 and make payment of the rent on the basis of reassessment which may be made by the CPWD. The petitioners further prayed to direct the respondents to execute a lease deed with effect from September 1, 1987 and to make the payment of rent at the revised rate of Rs.5140/- per month from

September 9, 1988 onwards.

#. An affidavit in reply was filed by the Assistant Collector, Central Excise, Division-III, Ahmedabad controverting averments made in the petition. It was, inter alia, claimed in the reply that in view of the provisions of Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the High Court had no jurisdiction to entertain the petition. What was mentioned in the reply was that as the petitioners had alternative remedy available under the Rent Act, the petition should not be entertained. It was also claimed that prayer for revision of rent from September 1, 1982 to August 30, 1987, being delated one, should not be entertained by the Court.

#. After hearing the parties at length, the learned Single Judge, by the impugned judgment dated August 21, 1996, has directed the respondents to pay rent to the original petitioners for the period 1982-87 in accordance with the certificate issued by CPWD dated October 24, 1994, fixing the average rent at the rate of Rs.3185/- after making adjustment of the amount paid in excess or short, giving rise to Letters Patent Appeal No.1303 of 1996 by the department. The original petitioners have filed Letters Patent Appeal No.1201 of 1996, challenging that part of the judgment of the learned Single Judge by which interest is denied to the petitioners on arrears of rent ordered to be paid to them by the respondents.

#. We have heard learned counsel for the parties at length. The submission that the claim for rent from September 1, 1982 to August 30, 1987 is barred by principles of delay and laches and, therefore, the impugned judgment should be set aside has no merits. Though the power under Article 226 to issue an appropriate writ is discretionary and inordinate delay in making the motion for a writ may be adequate ground for refusing to exercise the discretion, it is well settled that no hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and question of exercise of discretion has to be decided in view of the facts of each case. It is relevant to notice that the revision of rent was dependent on the assessment which was to be made by CPWD and CPWD made the assessment for the first on October 24, 1994. Though the original petitioner had made application dated September 21, 1981, requesting the department to revise the rent as per office memorandum of 1972, no action at all was taken by the department in

terms of the said office memorandum. Thereafter, office memorandum dated September 1, 1982 was issued by Directorate of Estates, Government of India, directing the departments concerned to revise the rent on fulfilment of certain conditions. Even thereafter also, no steps were taken by the department either to revise the rent or to get reasonable rent assessed by CPWD. The CPWD assessed the rent for the first time on October 24, 1994, after filing of the petition. Under the circumstances, it cannot be said that there was any delay on the part of the original petitioner in approaching the Court. The learned Single Judge while dealing with the submission advanced by the learned Additional Central Government Standing Counsel regarding delay and laches in filing the petition has adverted to several reported decision of the Supreme Court on the point and held that there is no justification in refusing relief of reasonable rent to the original petitioner on the basis of certificate which was issued in the year 1994 for the period from 1982 to 1987. We are in complete agreement with the view expressed by the learned Single Judge and we hold that the learned Single Judge was justified in entertaining the prayer made by the petitioner for refusing the rent for the period from September 1, 1982 to August 30, 1987.

#. The contention that the High Court had no jurisdiction to entertain the petition under Article 226 of the Constitution in view of the provisions of Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, cannot be accepted. Article 226 not being one of those provisions of the Constitution which may be changed by ordinary legislation, the powers under Article 226 cannot be taken away or curtailed by any legislation short of amendment of the Constitution. It is well settled the even where a statutory provision bars the jurisdiction of Courts, generally, it will not bar the jurisdiction of the High Court under Article 226. Having regard to the facts of the case, it cannot be said that there was inherent lack of jurisdiction in entertaining petition filed by the petitioner under Article 226 of the Constitution and, therefore, the plea that the impugned judgment should be set aside as the High Court had no jurisdiction to entertain the petition under Article 226 will have to be rejected and is hereby rejected.

#. The plea that in view of the alternative remedy available under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the petition should not have been entertained and the petitioner

should have been relegated to the alternative remedy available to him under the said Act also cannot be accepted at this stage. It may be stated that the department had filed reply contesting the petition, inter alia, on the ground that alternative remedy was available under the Rent Act and, therefore, the petition should not be entertained. However, after hearing the learned counsel for the parties at length, the learned Single Judge had thought it fit to issue Rule and had entertained the petition. It is well settled that once the petition is admitted, it should not be rejected on the ground that alternative remedy is available to the petitioner (see Hirday Narain v. Income Tax Officer, Bareilly, AIR 1971 SC 33, paragraph 12). The petition filed by the original petitioner was not only entertained by the learned Single Judge, but was heard on merits of the case. Moreover, with reference to Special Civil Application No. 2398 of 1993, the Enforcement Directorate had addressed a letter dated March 19, 1996 to the Additional Central Government Standing Counsel and requested him to bring to the notice of the Court instructions contained in the said letter. By the said letter, the department had shown its readiness land willingness to pay rent based on recognized principle of valuation as per the Government's usual practice in this regard, i.e. Rs.6600/- per month with effect from June 13, 1987 and Rs.12,440/- per month with effect from June 13, 1992 and had left the matter specifically to the decision of the High Court. When the department had agreed to pay revised rent on the basis of recognized principle of valuation from June 13, 1987 and subsequently from June 13, 1992, it would have been unreasonable to relegate the original petitioner to alternative remedy available to him under the Rent Act for the purpose of revision of rent from September 1, 1982 to August 31, 1987. Having regard to all these circumstances, we are of the opinion that no error was committed by the learned Single Judge in entertaining the petition on merits, though plea of alternative remedy available under the Rent Act was raised.

#. The contention that determination of rent at the rate of Rs.3185/- per month is unreasonable and, therefore, the impugned judgment should be set aside has no substance. It may be stated that in Special Civil Application No.2398 of 1993, the Enforcement Directorate had by a letter dated March 19, 1996, instructed the learned Additional Central Government Standing Counsel to bring it to the notice of the Court the fact that the department was agreeable to pay rent based on recognized principle of valuation, i.e. Rs.6600/- per month with

effect from June 13, 1987 and Rs.12,440/- with effect from June 13, 1992. By the said letter, the determination of the rent was specifically left to the decision of the High Court. Under the circumstances, the learned Single Judge, in our opinion, was justified in determining the rent for the period 1982-87 after taking the average of the two different figures mentioned in certificate dated October 24, 1994, which was issued by the Central Public Works Department. The learned Single Judge has given cogent and convincing reasons as to why average of the two figures mentioned in the said certificate should be adopted. These reasons are to be found in paragraphs 3 and 4 of the impugned judgment. Having regard to the facts and circumstances of the case, it cannot be said that determination of rent at the rate of Rs.3185/- per month on the basis of average of two figures mentioned in certificate dated October 24, 1994 is, in any manner, unreasonable or arbitrary so as to warrant interference of this Court in the present appeal. The said determination being just and reasonable is hereby upheld.

#. Thus, we do no find any substance in any of the contentions urged on behalf of the appellants in Letters Patent Appeal No.1303 of 1996 and the same is liable to be dismissed.

#. So far as appeal filed by the owner of the property claiming interest on arrears of rent is concerned, we find that the learned Single Judge has exercised discretion of not granting interest to the owner of the property for arrears of rent. The exercise of the discretion cannot be said to be unreasonable or arbitrary so as to warrant interference by this Court in the appeal. In fact, the department could not pay the revised amount of rent because of non-availability of certificate from CPWD for which the department cannot be penalized. Having regard to the fair stand which was taken by the department, as is reflected in its letter dated March 19, 1996, we are of the opinion that the learned Single Judge was justified in not entertaining the prayer made by the owner of the property to direct the respondents to pay arrears of rent with interest. On overall view of the matter, we do not think that any error is committed by the learned Single Judge in not awarding interest to the owner of the property so far as arrears of rent are concerned. Under the circumstances, Letters Patent Appeal No.1204 of 1996 filed by the owner of the property claiming interest is also liable to be dismissed.

#. For the foregoing reasons, both the appeals fail and are dismissed with no orders as to costs.

 ...

gt